

Serial No. 10/665,531
Reply to Office Action dated November 28, 2005

Docket No. MEMS-0196-US

REMARKS/ARGUMENTS

Favorable reconsideration and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks. Claims 1-4, 6-15, 17-31, and 33-34 are pending in the application.

35 U.S.C. § 102 & 103 Rejections

Claims 1-34 were rejected under 35 U.S.C. § 102(e) and 103(a) as allegedly using Brown et al. (U.S. Patent Application No. 2002/0045105) either alone or in combination with other references. Applicant respectfully traverses each of these rejections for at least the following reasons.

Applicant has amended the independent claims that were rejected under 35 U.S.C. § 102(e) as being anticipated by Brown et al, to contain features that were noted as not being contained in Brown et al. but were allegedly unpatentable in view of Brown et al. and other references. For example, claim 1 was amended to include the features of claim 5. Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown et al. in view of Nakasuji (U.S. Patent No. 6,446,399). However, Applicant respectfully submits that the alleged combination of Brown et al. in view of Nakasuji is improper because Brown et al. is assigned to the same assignee as the present application. Accordingly, Brown et al. is not prior art under 35 U.S.C. § 103(c) which states:

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

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Accordingly, the Examiner is respectfully requested to withdraw the rejection based upon 35 U.S.C. § 103, because Ito is not prior art with respect to the claimed invention.

The remaining independent claims (i.e., claims 10, 22, 30 and 34) recite related subject matter to the above-identified independent claim and/or are subject to rejection under 35 U.S.C. § 103(a) as being unpatentable over Brown et al. and are therefore allowable for reasons similar to those given above. Further, the dependent claims are allowable at least by virtue of their dependency on the above-identified independent claims. See MPEP § 2143.01. Moreover, these claims recite additional subject matter, which is not suggested by the documents taken either alone or in combination.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney, at the telephone number listed below.

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Deposit Account Authorization

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 50-3828 and please credit any excess fees to such deposit account.

Respectfully submitted,



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Date: 5/30/2006

Attachment(s):